

December 31, 2019

Mr. Eric Chodnicki
Daft McCune Walker, Inc.
501 Fairmount Avenue, Suite 300
Towson, MD 21286

Re: Sassafras Solar Facility – 632 Freeland Road
 Forest Buffer Variance
 Tracking #03-19-3088

Dear Mr. Chodnicki:

A request for a variance from the Baltimore County Code, Article 33, Title 3, a Law for the Protection of Water Quality, Streams, Wetlands and Floodplains (i.e. Forest Buffer Law), was received by the Department of Environmental Protection and Sustainability (EPS) on September 27, 2019. The applicant is seeking to continue agricultural and residential uses within eight (8) acres of Forest Buffer Easement (FBE), specifically 1.5 acres for the primary residence and associated yard as well as 6.5 acres of cropland. These uses have existed well prior to the inception of the Forest Buffer Law. The establishment and enforcement of FBE is being required as a condition of EPS approval of a solar facility proposed on approximately 13 acres of existing cropland at the northwest end of the approximately 100-acre property.

The property contains an unnamed tributary to Bee Tree Run (Use III-P), its floodplain and adjacent non-tidal wetlands. The tributary runs in close proximity to the existing primary residence as well as the associated barn, driveway, and other infrastructure. This homestead comprises 1.5 acres of the existing use impact and has existed on this property since 1892, generations before the inception of the Forest Buffer Law. While the majority of the proposed FBE is forested, there are several areas where the buffer encompasses cropland that has been in agricultural use for over a century, totaling 6.5 acres of the existing use impact. The proposed solar facility will not directly impact the FBE, nor any stream, wetland, floodplain, or forest.

This Department has reviewed your request and has determined that a practical difficulty exists in fully complying with Section 33-3-112 of the Forest Buffer Law given the close location of the stream and other resources to the long established homestead and cropland areas. However, impacts to water quality are not adequately minimized by the proposal given that the row crops extend right up to the stream in some places, and the applicant's proposal to plant meadow grasses within 20 feet of the stream is inadequate. However, the proposed planting of trees and shrubs to provide an approximately 30 foot-wide functioning buffer adjacent to the stream at the homestead and post the FBE is adequate mitigation for that portion of the site.

Therefore, we will grant a variance to continue existing land uses within a smaller portion of the Forest Buffer Easement than requested in accordance with Section 33-3-106 (a)(1) of the Baltimore County Code with the following conditions:

1. 6.8 acres of Forest Buffer Easement may continue as agricultural and homestead use. The functioning Forest Buffer limit, within which there shall be no disturbance, shall be as shown on the enclosed two-sheet plan. This functioning buffer includes a minimum 80-foot wide strip along the streams within all farmed areas that shall be left undisturbed.
2. Mitigation for continued use of 6.8 acres of Forest Buffer Easement shall be addressed by planting of 0.4 acre of currently mowed lawn along the stream as proposed on the Forest Buffer Protection Plan included with the variance application, as well as eradication of the approximately 15,000-square foot bamboo stand at the homestead. Additionally, the total 1.0 acre of cropland within the remaining functioning buffer shall be afforested. Tree stock shall be a minimum 1-inch caliper native deciduous species planted at 200 stems per acre.
3. “Forest Buffer-Do Not Disturb” signs shall be installed along the functioning Forest Buffer limit at 100-foot intervals or any significant turn in that boundary prior to issuance of any permit for the solar facility. The sign specifications and locations must be provided on the Forest Buffer Protection Plan. Information regarding these signs is enclosed.
4. The full Forest Buffer Easement required by Section 33-3-111 of this law shall be recorded along with its Declaration of Protective Covenants via the right of way plat process prior to reduction of any EPS-held security or December 31, 2020, whichever comes first. The right of way plat package shall be approved by EPS prior to issuance of any grading permit for the solar facility.
5. The following note shall appear on all subsequent plans and plats submitted for this project:

“A variance was granted on December 31, 2019 by the Baltimore County Department of Environmental Protection and Sustainability from the Law for the Protection of Water Quality, Streams, Wetlands, and Floodplains to allow continued use of portions of the Forest Buffer Easement. Conditions were placed on this variance to reduce impacts to water quality including planting and posting of the functioning Forest Buffer areas onsite.”
6. A final Forest Buffer Protection Plan revised to address EPS staff comments and reflect the conditions of this approval must be reviewed and approved by EPS prior to grading plan approval. This Forest Buffer Protection Plan may be combined with the final Forest Conservation Plan.

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7. An itemized cost estimate for implementation of the FBP must be reviewed and approved by EPS. A Forest Buffer Protection Plan security equal to 110% of the approved cost estimate must be posted with EPS via an Environmental Agreement prior to issuance of any grading permit for the solar facility.

It is the intent of this Department to approve this variance subject to the above conditions. Any changes to site layout will require submittal of revised plans and a new variance request.

Please have the party responsible for meeting the conditions of this variance sign the statement below and return a signed copy of this letter to this Department within 21 calendar days. Failure to return a signed copy may render this approval null and void, or may result in delays in the processing of plans for this project.

If you have any questions regarding this correspondence, please contact Ms. Libby Errickson at (410) 887-3980.

Sincerely yours,

David V. Lykens
Director

DVL/lbe

Enclosures (2)

- c. Ms. Kate Larkin, Sassafras Solar LLC
Mr. Charles Gary Atkinson and Mr. Stephen Gordon Atkinson, Owners

I/we agree to the above conditions to bring my/our property into compliance with Article 33, Title 3, Protection of Water Quality, Streams, Wetlands and Floodplains.

Owner's Signature

Date

Signature

Date

Printed Name

Printed Name